

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY LEGISLATION AMENDMENT
(FURTHER BUDGET AND OTHER MEASURES) BILL 1996

EXPLANATORY MEMORANDUM

(This Explanatory Memorandum takes account of an
amendment made by the Senate.)

(Circulated by the authority of the Minister for Social Security,
Senator the Hon Jocelyn Newman)



**SOCIAL SECURITY LEGISLATION AMENDMENT
(FURTHER BUDGET AND OTHER MEASURES) BILL 1996**

OUTLINE AND FINANCIAL IMPACT STATEMENT

This Bill gives effect to a number of measures announced in the Government's 1996-97 Budget.

The legislation involved is the *Social Security Act 1991* and the *Student and Youth Assistance Act 1973*.

**Schedule 1 - Amendments to remove the means test exemption for
superannuation assets in certain cases**

Schedule 1 amends the *Social Security Act 1991* to remove the means test exemption that applies to superannuation assets in certain cases.

It amends provisions relating to the pension and allowance income and assets tests, to provide that superannuation assets held by social security customers become assessable under the income and assets tests where a person aged below age pension age has been in receipt of income support for 39 weeks after reaching the age of 55.

Date of effect: 20 September 1997

Financial impact:	1996-97	\$ 1.333m (costs)
(net outlays)	1997-98	\$92.646m (savings)
	1998-99	\$67.474m (savings)

Schedule 2 - Single persons sharing accommodation

This Schedule makes amendments to the *Social Security Act 1991* and the *Student and Youth Assistance Act 1973* to set a new maximum rate of rent assistance for single people who share accommodation.

The new maximum rate will be introduced in recognition of the reduced costs faced by people in this form of accommodation. The amendments will set a new maximum rate of rent assistance for single people (without dependent children) who share accommodation (other than disability support pension recipients, carer pension recipients, boarders and lodgers, residents of nursing homes, people who share accommodation with their non-dependent children and people who live alone in caravans, mobile homes and vessels). The new maximum rate will be two-thirds of the maximum rate of rent assistance applicable to single people.

Date of effect: 1 July 1997

Financial impact:	1996-97	\$ 4.206m (costs)
(net outlays)	1997-98	\$25.639m (savings)
	1998-99	\$31.831m (savings)

Schedule 3 - Holiday processing of social security benefits

This Schedule makes amendments to the *Social Security Act 1991* and the *Student and Youth Assistance Act 1973* that are consequential on the 1996-97 Budget changes to holiday processing of social security benefits. These amendments ensure that overpayments of all social security benefits and youth training allowance that, due to a public holiday such as Easter, are paid without the stimulus of a recipient statement or on the basis of a statement that includes anticipated changes in a person's circumstances, are recoverable as a debt.

Date of Effect: Royal Assent.

<i>Financial Impact:</i>	1996 - 1997 - \$3.197m. (savings)
(net outlays)	1997 - 1998 - \$5.649m. (savings)
	1998 - 1999 - \$5.865m. (savings)

Schedule 4 - Application provision

Schedule 4 provides for the application of the amendments made by Schedule 1.

PRELIMINARY

Clause 1 of the Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996 sets out how the amending Act is to be cited.

Clause 2 specifies when the various clauses and Schedules of the amending Act are to commence.

Clause 3 says that each Act that is specified in a Schedule to the Social Security Legislation Amendment (Further Budget and Other Measures) Bill 1996 is amended in accordance with the applicable items in those Schedules.

SCHEDULE 1 - AMENDMENTS TO REMOVE THE MEANS TEST EXEMPTION FOR SUPERANNUATION ASSETS IN CERTAIN CASES

1. Summary of proposed changes

Schedule 1 amends the *Social Security Act 1991* (the Social Security Act) to remove the means test exemption that applies to superannuation assets held by social security customers in certain cases.

The amendments remove the exemptions from the income and assets tests of superannuation assets held by social security customers who:

- (a) are aged 55 years and over; and
- (b) have been receiving one or a combination of the following:
 - a social security pension;
 - a social security benefit;
 - a service pension;

for a cumulative period of at least 39 weeks (after reaching age 55).

2. Background

Currently, under the Social Security Act, assets held in superannuation and rollover funds by people below age pension age are exempt under the pension and allowance income and assets tests. Once age pension age is reached, amounts held are assessed under the extended deeming rules for the purpose of the income test, and are assessed as assets under the assets test.

Superannuation savings can generally be accessed when a person has retired after reaching age 55. Many people aged over 55 receiving an income support payment are either effectively retired or have poor labour market prospects. In these circumstances, it is reasonable to take their superannuation assets into account in working out how much income support can be paid.

Under the current rules, a single homeowner pensioner with \$250,000 in a superannuation investment can get a full pension, while a single homeowner with \$250,000 in other financial investments such as a bank account does not get any pension. The new rules will improve the fairness and consistency of the means tests as they apply to social security customers aged over 55.

Under the new rules, from 20 September 1997, a person below age pension age will have their superannuation and rollover assets assessed under the pension and allowance means tests only after they have received income support payments for a total period of 39 weeks after reaching age 55. The total period on income support is calculated on a cumulative basis. For example, if a person aged 55 or over received income support for a period of less than 39 weeks, and later recommenced to receive income support, the first period of receipt would count towards the 39 weeks total. The "qualifying" period of 39 weeks can have been served before 20 September 1997.

This approach means that customers aged over 55 with recent workforce experience who claim income support for the first time will not have their superannuation assets assessed immediately, and their superannuation assets will not be assessed if they resume employment before they have been on income support for a total of 39 weeks.

It should be noted that, once a person accumulates his or her "qualifying" period of 39 weeks on income support (and, as a result, commences to have his or her superannuation assets assessed), then he or she cannot subsequently regain the exemption for those assets. In other words, once a person has accumulated the relevant 39 week period, he or she will have any superannuation assets assessed on every occasion that he or she returns to income support payments.

In all cases, superannuation assets will be assessed when age pension age is reached.

Current means test arrangements, with income and asset "free" areas before payment is reduced, will continue and will mean that social security customers with small amounts of superannuation and little other income and assets will not be affected. For example, a single pensioner could have up to \$45,000 in total financial investments including superannuation assets and still receive the maximum payment rate.

When social security customers with large superannuation assets are affected by this initiative, they could draw on the income they generate from their superannuation assets to compensate for any reduction in income support payments, without having to reduce their superannuation capital.

It is estimated that less than 20% of pension and allowance customers aged between 55 and age pension age will be affected by this change.

If there are situations when social security customers genuinely cannot access their superannuation assets because of superannuation regulations, the Social Security Act contains a provision (section 1084) that could allow these assets to be exempted from the extended deeming rules.

3. Clauses and schedules involved in the changes

Clause 2(2): provides that the amendments made by Schedule 1 commence on 20 September 1997.

- Clause 2(4):** provides that the amendments made by Schedule 4 commence on 20 September 1997, immediately after the commencement of Part 3 of Schedule 24 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.
- Clause 3:** provides that the Social Security Act is amended in accordance with Schedules 1 and 4.
- Item 1 of Schedule 1:** inserts a reference to "prescribed pre-pension age person" into the index of definitions contained in section 3 of the Social Security Act.
- Item 2:** inserts into the definition of "income" contained in subsection 8(1) a reference to the new subsection 8(7A).
- Item 3:** inserts new subsections 8(7A) and (7B).
- Item 4:** repeals paragraph 8(8)(b), and the notes.
- Item 5:** removes the words "before pension age is reached" from the note to paragraph 9(1B)(d) and replaces them with the words "by persons who are neither prescribed pre-pension age persons nor persons who have reached pension age".
- Item 6:** removes the words "before pension age is reached" from the note to paragraph 9(1B)(e) and replaces them with the words "by persons who are neither prescribed pre-pension age persons nor persons who have reached pension age".
- Item 7:** removes the words "before pension age is reached" from the note to paragraph 9(1B)(f) and replaces them with the words "by persons who are neither prescribed pre-pension age persons nor persons who have reached pension age".
- Item 8:** removes the words "before pension age is reached" from the note to paragraph 9(1B)(g) and replaces them with the words "by persons who are neither prescribed pre-pension age persons nor persons who have reached pension age".
- Item 9:** inserts the words "is not a prescribed pre-pension age person and" into paragraph 9(1C)(a).
- Item 10:** inserts the words "is not a prescribed pre-pension age person and" into paragraph 9(1C)(b).
- Item 11:** inserts the words "is not a prescribed pre-pension age person and" into paragraph 9(1C)(c).

- Item 12:** inserts the words "is not a prescribed pre-pension age person and" into paragraph 9(1C)(ca).
- Item 13:** repeals note 1 to subsection 9(1C) and replaces it with a new note.
- Item 14:** inserts a definition of "prescribed pre-pension age person" into subsection 23(1).
- Item 15:** inserts a new subsection 23(1A).
- Item 16:** repeals section 1095.
- Item 17:** omits the words "before the person reaches pension age" from paragraph 1096(a).
- Item 18:** inserts a new paragraph 1096(aa).
- Item 19:** inserts a new note at the end of section 1096.
- Item 20:** repeals paragraph 1118(1)(f).
- Item 21:** inserts a new section 1118AA.
- Item 1 of Schedule 4** adds a new clause 104A into Schedule 1A of the Social Security Act.

4. Explanation of the changes

As stated under "Background" above, under the current means test provisions in the Social Security Act, assets held in superannuation and rollover funds are disregarded for persons below age pension age. This is because both the income and assets tests contain provisions that operate to exempt those funds held by persons below age pension age until either age pension age is reached or the funds are drawn upon. The amendments made by Schedule 1 remove those exemptions when certain conditions are met.

A central part of the amendments is the concept of a "prescribed pre-pension age person". This concept is defined as a person who, whether before, on or after 20 September 1997 (when these amendments commence operation):

- (a) reaches (or has reached) age 55 (but has not reached age pension age);
and
- (b) since reaching age 55 has received any, or any combination of, certain specified forms of payments, either for a continuous period of 39 weeks or for separate periods that add up to 39 weeks.

From 20 September 1997, the superannuation assets of a person who has met these conditions will be assessed under the income and assets tests.

The relevant social security payments are:

- (i) a social security pension;
- (ii) a social security benefit; and
- (iii) a service pension.

These terms are all defined in subsection 23(1) of the Social Security Act. In simple terms, however, the definitions pick up those payments that are subject to the general income and assets tests contained in the Social Security Act. They do not include family payments that are based on a person's taxable income.

Item 14 inserts the new definition into subsection 23(1) of the Social Security Act. **Item 1** inserts a reference to that new definition into the index of definitions contained in section 3 of the Social Security Act.

Subsection 8(1) of the Social Security Act contains a definition of "income" for the purposes of the Social Security Act. The definition excludes certain amounts by reference to specified subsections of section 8. **Item 2** adds to those subsections specified a reference to new subsection 8(7A).

Item 3 inserts into section 8 new subsections 8(7A) and (7B). New subsection 8(7A) provides that, subject to subsection (7B), a return on a person's investment in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is not income for the purposes of the Social Security Act if the person has not either reached age pension age or started to receive a pension or an annuity out of the relevant fund.

New subsection 8(7B) then modifies this exclusion, by stating that subsection (7A) does not exclude a return on a person's investment if the person is a "prescribed pre-pension age person". This allows the return to be treated as income. There are special rules, however, that attribute income to investments, based on their value (see Division 1B of Part 3.10 of the Social Security Act, which sets out the concept of "extended deeming"). A note to the new subsection refers the reader to the definition of that term inserted into subsection 23(1).

Subsection 8(8) of the Social Security Act excludes certain amounts from the definition of "income". Paragraph 8(8)(b) contains the exclusion set out in the new subsection 8(7A). Since the paragraph is made redundant by the new subsection, it (and the notes following) is repealed by **Item 4**.

Section 9 of the Social Security Act contains certain definitions that are relevant to the concept of "investment income". Subsection 9(1B) provides specific guidance in relation to "managed investments". The notes to paragraphs 9(1B)(d), (e), (f) and (g) refer the reader to provisions in subsection 9(1C) that apply to exclude certain investments from the definition of managed investments (and, therefore, from the operation of extended deeming) until pension age is reached. Since the effect of the amendments made by the Schedule is to limit the application of those provisions in subsection 9(1C) to persons who have not reached age pension age **and** are not "prescribed pre-pension age persons", **Items 5, 6, 7 and 8** amend the notes to paragraphs 9(1B)(d), (e), (f) and (g), respectively, to reflect this.

For similar reasons, **Items 9, 10, 11 and 12** amend paragraphs 9(1C)(a), (b), (c) and (ca), respectively (these being the paragraphs in subsection 9(1C) that operate to exclude the relevant investments), to limit the exclusion to persons who have not reached age pension age **and** are not "prescribed pre-pension age persons".

Note 1 to subsection 9(1C) refers the reader to the definition of "pension age" in subsection 23(1). **Item 13** repeals the note and substitutes a new note, that *also* refers the reader to the definition of "prescribed pre-pension age person".

As noted above, **Item 14** inserts into subsection 23(1) a definition of "prescribed pre-pension age person".

Item 15 inserts a new subsection 23(1A), that provides that, for the purposes of the definition of "prescribed pre-pension age person" contained in subsection 23(1), a person who receives a payday-based payment of a pension or benefit for the purposes of paragraph (b) of the definition, is taken to have received the payment for a period of 2 weeks. This provides a method of counting periods on payday-based payments for the purposes of the 39 week period that is prescribed in the definition. A new note, directing the reader to section 42 for an explanation of the concept of a "payday-based payment", is also inserted.

Section 1095 states how certain investments are to be treated before age pension age is reached. As a result of the amendments made by the Schedule, it is not necessary. It is repealed by **Item 16**.

Section 1096 provides for how income is to be assessed when a person makes a withdrawal from a superannuation fund, an approved deposit fund, a deferred annuity or an immediate annuity prior to pension age. In accordance with the amendments made by this Schedule, **Item 17** omits from paragraph 1096(a) the reference to "before the person reaches pension age" and **Item 18** inserts a new paragraph 1096(aa), that takes up that reference but with the further condition that the person also must not be a "prescribed pre-pension age person".

Item 19 adds a new note at the end of section 1096, that directs the reader to the definitions of "pension age" and "prescribed pre-pension age person" contained in subsection 23(1).

Section 1118 provides that certain assets are to be disregarded for the purposes of calculating the value of a person's assets. In particular, paragraph 1118(1)(f) provides that the value of a person's asset in a superannuation fund, an approved deposit fund, a deferred annuity or an ATO small superannuation account is to be disregarded until such time as the person either reaches pension age or commences to receive a pension or annuity out of the fund.

Item 20 repeals paragraph 1118(1)(f). **Item 21** inserts a new section 1118A, that provides an exemption from the assets test for the 4 types of investment nominated in the repealed paragraph 1118(1)(f) but subject to the amendments made by this Schedule - ie that the exclusion does not apply to a "prescribed pre-pension age person".

Schedule 1A of the Social Security Act contains various savings and transitional provisions. **Item 1 of Schedule 4** inserts a new clause 104A into Schedule 1A, that relates to the application of the amendments made by Schedule 1. It provides that if a person is in receipt of a period-based social security payment paid in arrears and the person's first payday after 20 September 1997 (when the amendments commence) is within 2 weeks of that day - ie if the person has not accrued a whole period before the amendments commence and the person's payment is affected by the amendments made by Schedule 1 then the person's rate of payment for that payday is to be calculated, on a pro rata basis, on the basis of the rate of payment applicable in relation to the respective periods. This means that the person is to be paid the "pre-amendment" rate in relation to that part of the period occurring before the amendments commence and the "post-amendment" rate in relation to that part of the period occurring after the amendments commence.

5. Commencement

The amendments made by Schedule 1 commence on 20 September 1997.

SCHEDULE 2

SINGLE PERSONS SHARING ACCOMMODATION

1. Summary of proposed changes

The *Social Security Act 1991* (the Social Security Act) and the *Student and Youth Assistance Act 1973* will be amended to set a new maximum rate of rent assistance for single people who share accommodation.

2. Background

A person's rate of rent assistance depends, in part, on the person's family situation. The proposed amendments will set a new maximum rate of rent assistance for single people (without dependent children) who share accommodation (other than disability support pension recipients, carer pension recipients, boarders and lodgers, residents of nursing homes, people who share accommodation with their non-dependent children and people who live alone in caravans, mobile homes and vessels).

The new maximum rate will be introduced in recognition of the reduced costs faced by people in this form of accommodation. The new maximum rate will be two-thirds of the maximum rate of rent assistance applicable to single people.

3. Schedule and clauses involved in the changes

Clause 2: specifies the commencement date as 1 July 1997.

Clause 3: provides that the *Social Security Act* and the *Student and Youth Assistance Act 1973* are amended in accordance with Schedule 2.

Amendments to the Social Security Act

Item 1: inserts a reference to the definition of "single person sharing accommodation" in the index of definitions in section 3.

Item 2: inserts a new section 5A which defines a "single person sharing accommodation".

Items 3, 5, 7, 9, 11, 13 and 15 make a series of consequential amendments to the various rate calculators which arise because of the insertion of the new definition.

Items 4, 6, 8, 10, 12, 14 and 16 insert notes signposting the location of the new definition.

Amendments to the Student and Youth Assistance Act 1973

- Item 17:** makes consequential amendments to the youth training allowance calculator which arise because of the insertion of the new definition.
- Item 18:** inserts a note signposting the location of the new definition.

4. Explanation of the changes

Amendments to the Social Security Act

Item 1 inserts a reference to the definition of "single person sharing accommodation" in the index of definitions in section 3.

Item 2 inserts a new section 5A which sets out the circumstances in which a person will be regarded as a single person sharing accommodation.

New subsection 5A(1) lays down the general rule under which a person is to be treated as a "single person sharing accommodation". In order to be a single person sharing accommodation, the person must not be a member of a couple or have dependent children, but must have, in common with one or more other people, the right to use at least one major area of accommodation. "Major area of accommodation" is defined in new subsection 5A(6) to mean a bathroom, kitchen or bedroom (whether these areas are identifiably separate from other areas of accommodation or not). Accordingly, where a person only has the shared right to use an area which is not a major area of accommodation (such as an entrance foyer, corridor, driveway, garage and so on), that person will not be treated as a single person sharing accommodation.

New subsection 5A(2) provides the first of a series of exceptions to the general rule. The exceptions specify that if a person is a recipient of a disability support or carer pension; pays, or is liable to pay, amounts for board and lodging; or resides in a nursing home, then the person will not be treated as a single person sharing accommodation.

Another exception to the general rule is specified in new subsection 5A(3). This subsection is aimed at people who, in addition to possessing the exclusive right to use a bathroom, kitchen and bedroom, have the right to use other major areas of accommodation. The purpose of subsection 5A(3) is to prevent people who live in self-contained accommodation from being treated as sharers if they also share communal facilities. Situations may arise where people in self-contained accommodation share other major areas of accommodation outside their own accommodation. This might occur where, for example, retirement village residents are living in their own units containing a bathroom, kitchen and bedroom, and also using communal retirement village facilities such as communal kitchen facilities. Similarly, a person in a self-contained granny flat containing a bathroom, kitchen and bedroom might share the use of kitchen or bathroom facilities in an adjoining house. In such cases, the person will not be regarded as sharing accommodation.

New subsection 5A(4) provides that a person will not be treated as a single person sharing accommodation if the person shares accommodation with one or more recipient children of the person. "Recipient child" is defined in new subsection 5A(6) to mean a child who receives a social security payment, an AUSTUDY allowance, a payment under the ABSTUDY Schooling scheme or the ABSTUDY Tertiary scheme, a service pension or a youth training allowance but who does not receive any amount by way of rent assistance. The purpose of new subsection 5A(4) is to ensure that the maximum rate of rent assistance for people is not reduced solely because people live with their non-dependent children (provided that those non-dependent children fall within the definition of "recipient child").

A further exception to the general rule is specified in new subsection 5A(5). This subsection provides that a person will not be treated as a single person sharing accommodation where the person lives:

alone; or

solely with a recipient child or recipient children (as defined in subsection 5A(6)) of the person

in a caravan, mobile home or vessel and also uses one or more major areas of accommodation in a caravan park or marina.

New subsection 5A(6) defines "major area of accommodation" as a bathroom, kitchen or bedroom (whether these areas are identifiably separate from other areas of accommodation or not). It is not intended that these areas need to be identifiably separate from other areas in the house or unit to constitute a major area of accommodation. Thus, for example, a single bed-sitting room containing a bed and cooking facilities will constitute both a bedroom and a kitchen for the purposes of this subsection.

New subsection 5A(6) also defines "recipient child" to mean a child who receives a social security payment, an AUSTUDY allowance, a payment under the ABSTUDY Schooling scheme or the ABSTUDY Tertiary scheme, a service pension or a youth training allowance, provided the child does not receive any amount by way of rent assistance.

Items 3, 5, 7, 9, 11, 13 and 15 insert into the various rate calculators the new maximum rate of rent assistance for single people sharing accommodation. The new maximum rate will be two-thirds of the maximum rate of rent assistance applicable to single people.

Items 4, 6, 8, 10, 12, 14 and 16 insert notes signposting the location of the new definition of single person sharing accommodation.

Amendments to the Student and Youth Assistance Act 1973

Item 17 inserts into the youth training allowance calculator the new maximum rate of rent assistance for single people sharing accommodation. The new maximum rate will be two-thirds of the maximum rate of rent assistance applicable to single people.

Item 18 inserts a note signposting the location of the new definition of single person sharing accommodation in the *Social Security Act*.

5. Commencement

The amendments in the Schedule will commence on 1 July 1997.

SCHEDULE 3

HOLIDAY PROCESSING OF SOCIAL SECURITY BENEFITS

1. Summary of proposed changes

This Schedule contains amendments to the *Social Security Act 1991* (the Social Security Act) and the *Student and Youth Assistance Act 1973* (the Youth Assistance Act) that are consequential on the Budget changes to holiday processing of social security benefits. These amendments ensure that overpayments of all social security benefits and youth training allowance that, due to a public holiday such as Easter, are paid without the stimulus of a recipient statement or on the basis of a statement that includes anticipated changes in a person's circumstances, are recoverable as a debt.

2. Background

A social security benefit is paid to a recipient each fortnight on a particular day (the person's normal payday). As a rule, a benefit is paid in arrears, that is, for the past period. A determination is made at the end of each period, typically a fortnight, whether a benefit is payable to the person for that fortnight and at what rate. Such a determination is usually made on the basis of a statement that a beneficiary is required to provide to the Department on a day before the person's normal payday in response to a 'recipient statement notice' (eg under section 658). The statement relates to the period that has just passed and communicates changes that occurred during that period and that may affect the payment of a benefit (eg earnings). The end-of-fortnight determination made on the basis of a recipient statement may result in the cancellation/suspension of the benefit or in the rate reduction or rate increase for that fortnight. Overpayments that result from such determination may constitute debts that are recoverable under Part 5.2 of the Social Security Act.

In a situation when public holidays disrupt the normal statement lodgement and payment cycle, special arrangements (holiday processing arrangements) are made to minimise the effect of the disruption on a person's payment.

Under current holiday processing arrangements, when a person's payday falls on a holiday, the person's benefit is usually prepaid, that is, it is paid earlier than on a person's normal payday and before the person's statement is received or before it can be assessed. The difference between the amount of prepayment and the amount that should have been paid for the holiday period constitutes a prepayment debt that, in most cases, is recoverable under the Social Security Act.

There are also situations where a person's statement lodgement day is delayed by a public holiday. As benefit payments are programmed in advance to be paid automatically on predetermined days, in such a case, the person's benefit is paid on the person's normal payday before the person's statement can be assessed. In that situation, the difference between the amount paid and the amount that should have been paid for the holiday period may not be recoverable.

Similar holiday processing arrangements apply to payment of youth training allowance under the Youth Assistance Act.

The current holiday processing arrangements based on prepayments, or payments on a normal payday, that are made without the assessment of a recipient statement result in a considerable number of debts, some of which are not recoverable. To remedy that, the holiday processing arrangements for Easter will be modified so that, where practicable, holiday processed payments are made on the basis of a recipient statement lodged before the person's usual lodgement day, that is a day or two before the end of the person's pay period. Recipients in this situation will be required to report on the part of the period already expired and estimate changes for the remaining part of the period (eg earnings estimate). There will be no holiday processing of payments affected by a single-day holiday. The current arrangement based on prepayment and later lodgement of a recipient statement will remain in place in respect of the Christmas/New Year period.

Amendments made by this Schedule extend the application of prepayment debts provisions in section 1223AA of the Social Security Act (currently applying to newstart, sickness and partner allowances and special benefit) to all social security benefits, the payment of which is stimulated by lodgement of a recipient statement in response to the relevant recipient statement notices. They also ensure that if the rate of those social security benefits, or youth training allowance, was calculated having regard to estimated income or anticipated changes set out in a recipient statement, the difference between the paid amount and the amount that should have been paid for the period is recoverable as a debt.

3. Clauses involved in the changes

Clause 2(1): specifies the commencement date as the day of Royal Assent.

Clause 3: provides that the Social Security Act and the Student and Youth Assistance Act is amended in accordance with Schedule 3.

Schedule 3:

Amendments to the Social Security Act

Item 1: amends paragraph 1223AA(1)(a).

Item 2: amends paragraph 1223AA(1)(b).

Item 3: inserts new subsection 1223AA(1AA).

Item 4: amends subsection 1223AA(1A).

Item 5: amends paragraph 1223AA(1B)(c).

Item 6: inserts new subsection 1223AA(1B).

Item 7: amends subsection 1223AA(1C).

Item 8: amends subsection 1223AA(2).

Amendments to the Student and Youth Assistance Act 1973

Item 9: amends and 287(2)(a).

Item 10: amends section 294 (note 1).

4. Explanation of the changes

Amendments to the Social Security Act

Section 1223AA of the Social Security Act deals with debts arising from prepayments. 'Prepayment' is defined in subsection 1223AA(2) by reference to sections 652, 722, 755 and 771KL that allow for an earlier payment of newstart allowance, sickness allowance, special benefit and partner allowance respectively where an allowance cannot reasonably be paid on a person's normal payday (where a payday would fall on a public holiday, etc.).

Under the modified holiday processing arrangements, the current prepayment arrangements will continue to apply to early payments made during the Christmas/New Year period in respect of all social security benefits the payment of which is stimulated by lodgement of a recipient statement in response to the relevant recipient statement notices.

Item 8 amends the definition of prepayment in subsection 1223AA(2) to include references to holiday prepayment provisions in respect of widow allowance (section 408GG) and mature age allowance under Part 2.12B (section 660YGG).

Subsection 1223AA(1) creates a debt out of the whole prepaid newstart allowance amount if a recipient failed to provide a recipient statement as required by a newstart allowance recipient statement notice (section 658) in respect of a holiday period for which the amount was prepaid. **Items 1 and 2** amend this provision to extend its application to widow allowance, mature age allowance under Part 2.12B, sickness allowance and special benefit. **Item 3** inserts a new subsection 1223AA(1AA) to provide for the creation of a debt out of the whole prepaid partner allowance amount if a partner allowee failed to provide a recipient statement for the prepaid period as required by a partner allowance recipient statement notice (section 771MD) or if the person's partner receiving newstart allowance, mature age allowance under Part 2.12B or special benefit failed to provide a statement for the prepaid period as required by the relevant recipient statement notice provisions (sections 658, 660YID and 760 respectively).

Subsection 1223AA(1A) allows the Secretary to determine in certain circumstances that subsection 1223AA(1) creating a debt out of the whole prepaid amount does not apply to a particular prepayment. Item 4 makes a consequential amendment to subsection 1223AA(1A) to extend the operation of this subsection to debts arising under new subsection 1223AA(1AA) inserted by Item 3.

Under subsection 1223AA(1B), if a recipient of newstart allowance, sickness allowance, special benefit or partner allowance whose benefit was prepaid, subsequently provides a recipient statement on the basis of which the rate of the benefit should be lower than it was prepaid, the difference between the prepaid amount and the amount that was payable for the holiday period is a debt. As a result of the amendment made by Item 8 to the definition of prepayment in subsection 1223AA(2), subsection 1223AA(1B) will also apply to widow allowance and mature age allowance under Part 2.12B prepayments. Under paragraph 1223AA(1B)(c), a debt under subsection 1223AA(1B) does not arise if the whole prepaid amount is a debt under subsection 1223AA(1). Item 5 makes a consequential amendment to paragraph 1223AA(1B)(c) to extend the operation of this paragraph to debts arising under new subsection 1223AA(1AA) inserted by Item 3.

Under the modified holiday processing arrangements, when a holiday affects the normal payment or statement lodgement cycle, payments will not be made on time (earlier than on a normal payday or on a normal payday) unless a recipient statement is lodged earlier than usual (except for prepayments during the Christmas/New Year period when statements will continue to be lodged after payments are made). A recipient statement lodged in this situation will have to contain an estimate of the person's earnings/changes of circumstances for the remaining part of the person's period affected by the holiday.

New subsection 1223AA(1BA) inserted by Item 6 relates to a payment of a social security benefit (with the exception of parenting allowance that is not a period-based payment as are all other social security benefits) that is made for a period on the basis of a recipient statement in which the recipient estimated his or her earnings or anticipated changes of circumstances affecting the payment. This subsection provides that if an amount of a payment made on the basis of estimates/anticipated changes differs from the amount that would have been paid in respect of the period on the basis of the income that the person actually earned or the circumstances that actually occurred, the difference is a recoverable debt.

New paragraph 1223AA(1BA)(a) allows for the recovery of the difference referred to above regardless of whether the payment made on the basis of a person's estimate was made before or after the commencement of this subsection (Royal Assent). In practice, given that recipients of social security benefits will not be requested to provide estimates of changes before the implementation date of policy changes relating to the modified holiday processing arrangements, that is before January 1997, the operation of this subsection will be limited to payments made from January 1997 onwards.

New subsection 1223AA(1BA) can only be invoked if the relevant recipient statement notice in response to which a recipient statement was provided specifically required the recipient to estimate/anticipate changes (new paragraph 1223AA(1BA)(b) refers). A note at the end of subsection 1223AA(1BA) refers the reader to the definition of recipient statement notice in subsection 23(1).

New subsection 1223AA(1BA) applies to payments that are prepaid as well as the payments that are made on a person's normal payday providing the payment is made on the basis of a statement containing estimated income or anticipated changes. To ascertain that, the heading to section 1223AA is replaced by the heading 'Debts arising from prepayments and certain other payments' (a note at the end of new subsection 1223AA(1B) refers).

Item 7 makes consequential amendments to subsection 1223AA(1C) that provide for means of recovery of a debt due under specific subsections of section 1223AA.

Item 7 amends subsection 1223AA(1C) to include references to new subsections 1223AA(1AA) and 1223AA(1BA) inserted by **Items 3 and 6** respectively.

Amendments to the Youth Assistance Act

Subsection 262(1) of the Youth Assistance Act creates a debt out of the whole prepaid amount of youth training allowance if a recipient failed to provide a statement under section 150 in respect of the prepaid period. If a youth training allowance recipient provided a statement as required by section 150 and the amount of the prepayment differs from the amount that should have been paid for the period, the difference is a debt under subsection 262(2).

Item 9 inserts a new subsection 262(3A) that mirrors new subsection 1223AA(1BA) inserted in the Social Security Act by **Item 6**. Under new subsection 262(3A), if an amount of youth training allowance was paid for a period on the basis of estimates/anticipated changes and that amount differs from the amount that would have been paid in respect of the period on the basis of the income that the person actually earned or the circumstances that actually occurred, the difference is a recoverable debt.

New subsection 262(3A) can only be invoked if a notice under section 150 in response to which a statement was provided specifically required the recipient to estimate/anticipate changes (new paragraph 262(3A)(b) refers).

New subsection 262(3A) applies to both prepaid payments and payments made on a person's normal payday providing the payment was made on the basis of a statement containing estimated income or anticipated changes. To ascertain that, the heading to section 262 is replaced by the heading 'Debts arising from prepayments and certain other payments' (a note at the end of new subsection 262(3A) refers).

Item 10 amends subsection 262(4) that provides for means of recovery of a debt due under specific subsections of section 262 to include references to new subsection 262(3A) inserted by **Item 9**.

5. Commencement

The amendments included in this Schedule commence on the day of Royal Assent.

SCHEDULE 4 - APPLICATION PROVISION

Item 1 of Schedule 4 inserts a new clause 104A into Schedule 1A of the Social Security Act. Schedule 1A contains savings and transitional provisions. New clause 104A provides for the application of the amendments made by Schedule 1 of this Bill.

